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SENATE BILL 58

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO UTILITIES; PROVIDING FOR COST RECOVERY FOR AIR
EMISSIONS REDUCTION INVESTMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-8-7 NMSA 1978 (being Laws 1991,
Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates or
charges sought by a public utility, the burden of proof to show
that the increased rate or charge is just and reasonable shall
be upon the utility.

B. Unless the commission otherwise orders, no
public utility shall make any change in any rate that has been
duly established except after thirty days' notice to the
commission, which notice shall plainly state the changes

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1 proposed to be made in the rates then in force and the time
2 when the changed rates will go into effect and other
3 information as the commission by rule requires. The utility
4 shall also give notice of the proposed changes to other
5 interested persons as the commission may direct. All proposed
6 changes shall be shown by filing new schedules that shall be
7 kept open to public inspection. The commission for good cause
8 shown may allow changes in rates without requiring the thirty
9 days' notice, under conditions that it may prescribe.

10 C. Whenever there is filed with the commission by
11 any public utility a complete application as prescribed by
12 commission rule proposing new rates, the commission may, upon
13 complaint or upon its own initiative, except as otherwise
14 provided by law, upon reasonable notice, enter upon a hearing
15 concerning the reasonableness of the proposed rates. If the
16 commission determines a hearing is necessary, it shall suspend
17 the operation of the proposed rates before they become
18 effective but not for a longer initial period than nine months
19 beyond the time when the rates would otherwise go into effect,
20 unless the commission finds that a longer time will be
21 required, in which case the commission may extend the period
22 for an additional three months. The commission shall hear and
23 decide cases with reasonable promptness. The commission shall
24 adopt rules identifying criteria for various rate and tariff
25 filings to be eligible for suspension periods shorter than what

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1 is allowed by this subsection and to be eligible for summary
2 approval without hearing.

3 D. If after a hearing the commission finds the
4 proposed rates to be unjust, unreasonable or in any way in
5 violation of law, the commission shall determine the just and
6 reasonable rates to be charged or applied by the utility for
7 the service in question and shall fix the rates by order to be
8 served upon the utility or the commission by its order shall
9 direct the utility to file new rates respecting such service
10 that are designed to produce annual revenues no greater than
11 those determined by the commission in its order to be just and
12 reasonable. Those rates shall thereafter be observed until
13 changed, as provided by the Public Utility Act.

14 E. Except as provided in this section and otherwise
15 provided by law, any increase in rates or charges for the
16 utility commodity based upon cost factors other than taxes or
17 cost of fuel, gas or purchased power, filed for after April 4,
18 1991, shall be permitted only after notice and hearing as
19 provided by this section. The commission shall enact rules
20 governing the use of tax, fuel, gas or purchased power
21 adjustment clauses by utilities that enable the commission to
22 consider periodically at least the following:

23 (1) whether the existence of a particular
24 adjustment clause is consistent with the purposes of the Public
25 Utility Act, including serving the goal of providing reasonable

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1 and proper service at fair, just and reasonable rates to all
2 customer classes;

3 (2) the specific adjustment mechanism to
4 recover tax, gas, fuel or purchased power costs;

5 (3) which costs should be included in an
6 adjustment clause, procedures to avoid the inclusion of costs
7 in an adjustment clause that should not be included and methods
8 by which the propriety of costs that are included may be
9 determined by the commission in a timely manner, including what
10 informational filings are required to enable the commission to
11 make such a determination; and

12 (4) the proper adjustment period to be
13 employed.

14 F. The commission may eliminate or condition a
15 particular adjustment clause if it finds such elimination or
16 condition is consistent with the purposes of the Public Utility
17 Act, including serving the goal of providing reasonable and
18 proper service at fair, just and reasonable rates to all
19 customer classes; provided, however, that no such elimination
20 or condition shall be ordered unless such elimination or
21 condition will not place the affected utility at a competitive
22 disadvantage. The commission rules shall also provide for
23 variances and may provide for separate examination of a
24 utility's adjustment clause based upon that utility's
25 particular operating characteristics.

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1 G. Whenever there is filed with the commission a
2 schedule proposing new rates by a rural electric cooperative
3 organized under the Rural Electric Cooperative Act, the rates
4 shall become effective as proposed by the rural electric
5 cooperative without a hearing. However, the cooperative shall
6 give written notice of the proposed rates to its affected
7 patrons at least thirty days prior to the filing with the
8 commission, and the commission shall suspend the rates and
9 conduct a hearing concerning the reasonableness of any proposed
10 rates filed by a rural electric cooperative pursuant to
11 Subsections C and D of this section upon the filing with the
12 commission of a protest setting forth grounds for review of the
13 proposed rates signed by one or more members of the rural
14 electric cooperative and if the commission determines there is
15 just cause for reviewing the proposed rates on one or more of
16 the grounds of the protest. The protest shall be filed no
17 later than twenty days after the filing with the commission of
18 the schedule proposing the new rates. The hearing and review
19 shall be limited to the issues set forth in the protest and for
20 which the commission may find just cause for the review, which
21 issues shall be contained in the notice of hearing. The
22 provisions of this subsection shall not be construed to affect
23 commission authority or procedure to regulate the sale,
24 furnishing or delivery by wholesale suppliers of electricity to
25 rural electric cooperatives pursuant to Section 62-6-4 NMSA

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1 1978. In addition to the adjustments permitted by Subsections
2 E and F of this section, the commission may authorize rate
3 schedules of rural electric cooperatives to recover, without
4 notice and hearing, changes in the cost of debt capital
5 incurred pursuant to securities that are lawfully issued. For
6 the purposes of this subsection, a member of a rural electric
7 cooperative is a member as defined by the Rural Electric
8 Cooperative Act.

9 H. After a hearing and receipt of testimony, the
10 commission shall approve a cost recovery rate rider, outside of
11 a general rate case pursuant to this section, for a term that
12 allows for full and timely recovery of the costs of a public
13 utility's voluntary installation of an air emissions reduction
14 project at a generating plant if:

15 (1) the plant supplies electric power to New
16 Mexico retail customers;

17 (2) the public utility files an application
18 with the commission, with copies to the air quality bureau of
19 the department of environment, the attorney general and the
20 intervenors in its last rate case, that includes:

21 (a) a description of each proposed
22 voluntary air emissions reduction project;

23 (b) a schedule for construction and
24 implementation of the project;

25 (c) the projected emissions reductions

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1 from the project;

2 (d) the proposed elements and method of
3 cost recovery under the proposed rate rider; and

4 (e) a commitment that any revenues the
5 public utility receives from selling allowances under Title IV
6 of the federal Clean Air Act will be credited to the public
7 utility's customers to offset air quality improvement costs if
8 such revenues result from the voluntary air emissions reduction
9 agreement;

10 (3) the air emissions reduction project will
11 not increase the capacity of the generating plant by more than
12 ten percent;

13 (4) the air emissions reduction project will
14 not increase other air pollutants above de minimis thresholds;

15 (5) the department of environment, within
16 ninety days of receipt of the utility's filing, certifies that
17 the proposed air emissions reduction project creates
18 significant environmental benefits, including reduction of
19 actual air emissions from the generating plant based on the
20 average of the three most recent years of emissions data; and

21 (6) the total of all cost recovery riders
22 approved under this subsection may not at any time exceed five
23 percent of the electric utility's total retail rates, including
24 fuel costs for calendar year 2004.

25 I. The commission shall apportion, pro rata to each

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1 type and class of service provided by the public utility, the
2 air quality improvement costs allocable to New Mexico retail
3 customers under this section. The proposed rate rider remains
4 in effect until all air quality improvement costs have been
5 recovered or are included in base rates in a general rate case.

6 J. Each year after the date the original cost
7 recovery rate rider takes effect, the commission may review the
8 cost recovery rate rider in light of the public utility's
9 performance in complying with the voluntary emissions reduction
10 agreement and may alter the rider as appropriate."